

# inBrief



## Do I need a DIFC will?

By Stuart Walker | May 2015

The Wills and Probate Registry in the Dubai International Financial Centre (the “**Registry**”) opened in late April of this year. It is now possible to register a will in Dubai, and to have a high degree of confidence that it will be enforced in accordance with its terms. Prior to the establishment of the Registry, it hadn’t been possible to be so confident that foreign wills would be enforced in the United Arab Emirates. There were concerns that Shari’a law would be applied to the estates of non-Muslims, particularly with respect to real property (land and buildings).

In summary therefore, the establishment of the Registry is a welcome initiative, and if you have assets in Dubai then you should almost certainly register a will with the Registry.

A few points to note right from the beginning: firstly, only non-Muslims may lodge their wills with the Registry. At the time of registering the will the testator (the person making the will) must confirm that they are not a Muslim, nor have ever been a Muslim. If this confirmation is later proved to be inaccurate then the will becomes void. Secondly, testators must be at least 22 years old. Thirdly, the will can only relate to assets in the Emirate of Dubai. Finally, the value of the Dubai assets must be balanced with the costs of using the Registry. There are a number of fees payable, some reasonably significant for many people. (The cost of registering a will is currently AED 10,000.)

Prior to the introduction of the Registry, a multitude of approaches were taken in respect to estate planning by Dubai residents. Many people, of various faiths, made no will at all. For those people who were aware of the applicable inheritance and intestacy rules, this was (and continues to be) a perfectly sensible choice. If your family structure is straightforward, and you understand and are comfortable with how your assets will be distributed where there is no will, then there is no reason to make one.

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Stuart’s primary practice includes financial services regulation. He advises parties during Dubai Financial Services Authority (DFSA) investigations and, where necessary, negotiates settlements on their behalf. Stuart was instructed by the first authorised firm to be fined by the DFSA and has since gone on to advise in connection with a significant number of DFSA investigations. He was admitted as a solicitor in England & Wales in 2001 and moved to Dubai in 2003.

Historically, a variety of solutions were offered to those people who were not sure how their assets would be treated if there was no will, and who wished to create one. Some were told that it was necessary to register a Dubai will with a local notary. Others were told to make a will in their home country, have it translated into Arabic, and then registered locally. Others were told that it was sufficient to sign the will and have it witnessed by a staff member at their home country consulate in Dubai. In short, there was no consensus as to the most appropriate method of creating a will in the UAE, or of ensuring that it would be enforced in accordance with its terms.

The DIFC Registry seeks to resolve these concerns. Wills are reviewed by Registry staff prior to being accepted for registration. This review is anticipated to prevent the registration of wills with blatantly unacceptable terms (ie “. . . and finally, I leave the balance of my estate for the funding of international terrorism, and general crimes against the state”). More significantly, the review ensures that the will formalities are properly attended to (that the will is correctly witnessed, and so forth).

Once registered, the intention is that the terms of the will can be given effect to by the DIFC Court if necessary. Decisions of the DIFC Court must, as a matter of UAE law, be enforced by the Dubai Courts. It is then anticipated that other relevant Dubai governmental entities (such as the Economic Department in respect of assets such as company shares, or the Lands Department in respect of real property) would automatically abide by orders issued by the Dubai Courts (or even by the DIFC Court directly).

This process appears robust, but a small note of caution must be sounded. This is a new, and so far untested, system. It remains to be seen whether the relevant government departments will indeed recognize DIFC wills. We anticipate that this point will be resolved relatively soon, as there appears to be a significant number of individuals eager to make use of the Registry. Furthermore, we have no reason to believe that the system will not work as it should. On that basis, we welcome this beneficial addition to the legal landscape of the Emirate of Dubai. ■

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Afridi & Angell can assist with the drafting and registration of DIFC wills. Please contact Stuart Walker if you wish to arrange an appointment to discuss any of the issues mentioned in this note.

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